

CROSS REFERENCES

Issue of patent to assignee, see section 152 of this title.
Oaths, acknowledgments, affidavits and depositions before United States Commissioners, see section 637 of Title 28, Judiciary and Judicial Procedure.

§ 262. Joint owners.

In the absence of any agreement to the contrary, each of the joint owners of a patent may make, use or sell the patented invention without the consent of and without accounting to the other owners. (July 19, 1952, ch. 950, § 1, 66 Stat. 810.)

LEGISLATIVE HISTORY

Reviser's Note.—This section states a condition in existing law not expressed in the existing statutes.

Chapter 27.—GOVERNMENT INTERESTS IN PATENTS

Sec.

266. Issue of patents without fees to Government employees.

267. Time for taking action in Government applications.

§ 266. Issue of patents without fees to Government employees.

The Commissioner may grant, subject to the provisions of this title, to any officer, enlisted man, or employee of the Government, except officers and employees of the Patent Office, a patent without the payment of fees, when the head of a department or agency certifies the invention is used or likely to be used in the public interest and the applicant in his application states that the invention described therein, if patented, may be manufactured and used by or for the Government for governmental purposes without the payment to him of any royalty thereon, which stipulation shall be included in the patent. (July 19, 1952, ch. 950, § 1, 66 Stat. 811.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on Title 35, U. S. C., 1946 ed., § 45 (Mar. 3, 1883, ch. 143, 22 Stat. 625, amended April 30, 1928, ch. 460, 45 Stat. 467).

Changes in language are made. The omission of the specific reference to 35 U. S. C., 1946 ed., § 31, (R. S. 4886) broadens the section so as to include design patents.

§ 267. Time for taking action in Government applications.

Notwithstanding the provisions of sections 133 and 151 of this title, the Commissioner may extend the time for taking any action to three years, when an application has become the property of the United States and the head of the appropriate department or agency of the Government has certified to the Commissioner that the invention disclosed therein is important to the armament or defense of the United States. (July 19, 1952, ch. 950, § 1, 66 Stat. 811.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on Title 35, U. S. C., 1946 ed., § 37 (R. S. 4894, amended (1) Mar. 3, 1897, ch. 391, § 4, 29 Stat. 692, 693, (2) July 6, 1916, ch. 225, § 1, 39 Stat. 345, 347-8, (3) Mar. 2, 1927, ch. 273, § 1, 44 Stat. 1335, (4) Aug. 7, 1939, ch. 568, 53 Stat. 1264).

This provision, which appears as the last two sentences of the corresponding section of the present statute (see note to section 133) is made a separate section and rewritten in simpler form.

Chapter 28.—INFRINGEMENT OF PATENTS

Sec.

271. Infringement of patent.

272. Temporary presence in the United States.

§ 271. Infringement of patent.

(a) Except as otherwise provided in this title, whoever without authority makes, uses or sells any patented invention, within the United States during the term of the patent therefor, infringes the patent.

(b) Whoever actively induces infringement of a patent shall be liable as an infringer.

(c) Whoever sells a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use, shall be liable as a contributory infringer.

(d) No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of misuse or illegal extension of the patent right by reason of his having done one or more of the following: (1) derived revenue from acts which if performed by another without his consent would constitute contributory infringement of the patent; (2) licensed or authorized another to perform acts which if performed without his consent would constitute contributory infringement of the patent; (3) sought to enforce his patent rights against infringement or contributory infringement. (July 19, 1952, ch. 950, § 1, 66 Stat. 811.)

LEGISLATIVE HISTORY

Reviser's Note.—The first paragraph of this section is declaratory only, defining infringement.

Paragraphs (b) and (c) define and limit contributory infringement of a patent and paragraph (d) is ancillary to these paragraphs, see preliminary general description of bill. One who actively induces infringement as by aiding and abetting the same is liable as an infringer, and so is one who sells a component part of a patented invention or material or apparatus for use therein knowing the same to be especially made or especially adapted for use in the infringement of the patent except in the case of a staple article or commodity of commerce having other uses. A patentee is not deemed to have misused his patent solely by reason of doing anything authorized by the section.

§ 272. Temporary presence in the United States.

The use of any invention in any vessel, aircraft or vehicle of any country which affords similar privileges to vessels, aircraft or vehicles of the United States, entering the United States temporarily or accidentally, shall not constitute infringement of any patent, if the invention is used exclusively for the needs of the vessel, aircraft or vehicle and is not sold in or used for the manufacture of anything to be sold in or exported from the United States. (July 19, 1952, ch. 950, § 1, 66 Stat. 812.)

LEGISLATIVE HISTORY

Reviser's Note.—This section follows the requirement of the International Convention for the Protection of Industrial Property, to which the United States is a party.

and also codifies the holding of the Supreme Court that use of a patented invention on board a foreign ship does not infringe a patent.

Chapter 29.—REMEDIES FOR INFRINGEMENT OF PATENT, AND OTHER ACTIONS

Sec.

- 281. Remedy for infringement of patent.
- 282. Presumption of validity; defenses.
- 283. Injunction.
- 284. Damages.
- 285. Attorney fees.
- 286. Time limitation on damages.
- 287. Limitation on damages; marking and notice.
- 288. Action for infringement of a patent containing an invalid claim.
- 289. Additional remedy for infringement of design patent.
- 290. Notice of patent suits.
- 291. Interfering patents.
- 292. False marking.
- 293. Nonresident patentee, service and notice.

§ 281. Remedy for infringement of patent.

A patentee shall have remedy by civil action for infringement of his patent. (July 19, 1952, ch. 950, § 1, 66 Stat. 812.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on Title 35, U. S. C., 1946 ed., §§ 67 and 70, part (R. S. 4919; R. S. 4921, amended (1) Mar. 3, 1897, ch. 391, § 6, 29 Stat. 694, (2) Feb. 18, 1922, ch. 58, § 8, 42 Stat. 392, (3) Aug. 1, 1946, ch. 726, § 1, 60 Stat. 778).

The corresponding two sections of existing law are divided among sections 281, 283, 284, 285, 286 and 289 with some changes in language. Section 281 serves as an introduction or preamble to the following sections, the modern term civil action is used, there would be, of course, a right to a jury trial when no injunction is sought.

CROSS REFERENCES

Action against United States in Court of Claims for use and manufacture of invention, see section 1498 of Title 28, Judiciary and Judicial Procedure.

Jurisdiction—

Courts of appeals from judgments in civil actions for infringement, final except for accounting, see section 1292 of Title 28, Judiciary and Judicial Procedure.

District courts as having original and exclusive jurisdiction of civil actions arising under any Act of Congress relating to patents, see section 1338 of Title 28, Judiciary and Judicial Procedure.

Power of court to grant injunctions, see section 283 of this title.

Service of process in infringement action, see section 1694 of Title 28, Judiciary and Judicial Procedure.

Venue of actions for infringement, see section 1400 of Title 28, Judiciary and Judicial Procedure.

§ 282. Presumption of validity; defenses.

A patent shall be presumed valid. The burden of establishing invalidity of a patent shall rest on a party asserting it.

The following shall be defenses in any action involving the validity or infringement of a patent and shall be pleaded:

(1) Noninfringement, absence of liability for infringement or unenforceability,

(2) Invalidity of the patent or any claim in suit on any ground specified in part II of this title as a condition for patentability,

(3) Invalidity of the patent or any claim in suit for failure to comply with any requirement of sections 112 or 251 of this title,

(4) Any other fact or act made a defense by this title.

In actions involving the validity or infringement of a patent the party asserting invalidity or non-infringement shall give notice in the pleadings or otherwise in writing to the adverse party at least thirty days before the trial, of the country, number, date, and name of the patentee of any patent, the title, date, and page numbers of any publication to be relied upon as anticipation of the patent in suit or, except in actions in the United States Court of Claims, as showing the state of the art, and the name and address of any person who may be relied upon as the prior inventor or as having prior knowledge of or as having previously used or offered for sale the invention of the patent in suit. In the absence of such notice proof of the said matters may not be made at the trial except on such terms as the court requires. (July 19, 1952, ch. 950, § 1, 66 Stat. 812.)

LEGISLATIVE HISTORY

Reviser's Note.—Derived from Title 35, U. S. C., 1946 ed., § 69 (R. S. 4920, amended (1) Mar. 3, 1897, ch. 391, § 2, 29 Stat. 692, (2) Aug. 5, 1939, ch. 450, § 1, 53 Stat. 1212).

The first paragraph declares the existing presumption of validity of patents.

The five defenses named in R. S. 4920 are omitted and replaced by a broader paragraph specifying defenses in general terms.

The third paragraph, relating to notice of prior patents, publications and uses, is based on part of the last paragraph of R. S. 4920 which was superseded by the Federal Rules of Civil Procedure but which is reinstated with modifications.

§ 283. Injunction.

The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable. (July 19, 1952, ch. 950, § 1, 66 Stat. 812.)

LEGISLATIVE HISTORY

Reviser's Note.—Based on Title 35, U. S. C., 1946 ed., § 70, part (R. S. 4921, amended (1) Mar. 3, 1897, ch. 391, § 6, 29 Stat. 694, (2) Feb. 18, 1922, ch. 58, § 8, 42 Stat. 392, (3) Aug. 1, 1946, ch. 726, § 1, 60 Stat. 778).

This section is the same as the provision which opens R. S. 4921 with minor changes in language.

CROSS REFERENCES

Injunction in three-judge district court, see section 2284 of Title 28, Judiciary and Judicial Procedure.

Interlocutory injunction to prevent irreparable damage, see section 2284 of Title 28, Judiciary and Judicial Procedure.

§ 284. Damages.

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

When the damages are not found by a jury, the court shall assess them. In either event the court may increase the damages up to three times the amount found or assessed.

The court may receive expert testimony as an aid to the determination of damages or of what royalty